

By: Martinez Fischer

H.B. No. 1164

A BILL TO BE ENTITLED

AN ACT

relating to restrictions on the use of a stun gun; providing certain criminal penalties and defenses to prosecution.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 46.01, Penal Code, is amended by adding Subdivisions (17) and (18) to read as follows:

(17) "Stun gun" means a device that is intended, designed, made, or adapted to incapacitate a person by inflicting an electrical charge through the emission of a projectile or conductive stream.

(18) "Recognized state" means another state with which the attorney general of this state, with the approval of the governor of this state, negotiated an agreement after determining that the other state:

(A) has firearm proficiency requirements for peace officers; and

(B) fully recognizes the right of peace officers commissioned in this state to carry weapons in the other state.

SECTION 2. Section 46.03, Penal Code, is amended by adding Subsections (j) and (k) to read as follows:

(j) It is a defense to prosecution under this section that the actor possessed a stun gun and was, at the time of the offense:

(1) a license holder under Subchapter H-1, Chapter 411, Government Code, who engaged in the conduct after successfully

1 completing the training described by Section 411.223, Government  
2 Code; or

3 (2) a commissioned security officer registered with  
4 the Private Security Bureau of the Department of Public Safety who  
5 engaged in the conduct while traveling to or from the actor's place  
6 of assignment or in the actual discharge of duties as a commissioned  
7 security officer.

8 (k) It is an exception to the application of this section  
9 that the actor possessed a stun gun and was, at the time of the  
10 offense, a peace officer, including a commissioned peace officer of  
11 a recognized state and a special investigator under Article 2.122,  
12 Code of Criminal Procedure, who was authorized by law to carry a  
13 weapon.

14 SECTION 3. Section 46.05, Penal Code, is amended by  
15 amending Subsections (a) and (b) and adding Subsections (h) and (i)  
16 to read as follows:

17 (a) A person commits an offense if he intentionally or  
18 knowingly possesses, manufactures, transports, repairs, or sells:

- 19 (1) an explosive weapon;  
20 (2) a machine gun;  
21 (3) a short-barrel firearm;  
22 (4) a firearm silencer;  
23 (5) a switchblade knife;  
24 (6) knuckles;  
25 (7) armor-piercing ammunition;  
26 (8) a chemical dispensing device; [~~or~~]  
27 (9) a zip gun; or

1           (10) a stun gun.

2           (b) It is a defense to prosecution under Subsections  
3 (a)(1)-(9) [~~this section~~] that the actor's conduct was incidental  
4 to the performance of official duty by the armed forces or national  
5 guard, a governmental law enforcement agency, or a correctional  
6 facility.

7           (h) It is a defense to prosecution under Subsection (a)(10)  
8 that the actor was, at the time of the offense:

9           (1) a license holder under Subchapter H-1, Chapter  
10 411, Government Code, who engaged in the conduct after successfully  
11 completing the training described by Section 411.223, Government  
12 Code; or

13           (2) a commissioned security officer registered with  
14 the Private Security Bureau of the Department of Public Safety who  
15 engaged in the conduct in the actual discharge of duties as a  
16 commissioned security officer.

17           (i) It is an exception to the application of Subsection  
18 (a)(10) that the actor was, at the time of the offense, a peace  
19 officer, including a commissioned peace officer of a recognized  
20 state and a special investigator under Article 2.122, Code of  
21 Criminal Procedure, who was authorized by law to carry a weapon.

22           SECTION 4. Chapter 411, Government Code, is amended by  
23 adding Subchapter H-1 to read as follows:

24           SUBCHAPTER H-1. LICENSE TO CARRY A STUN GUN

25           Sec. 411.220. DEFINITIONS. In this subchapter, "recognized  
26 state" and "stun gun" have the meanings assigned by Section 46.01,  
27 Penal Code.

1       Sec. 411.221. LICENSE TO CARRY A CONCEALED STUN GUN. The  
2 department by rule shall establish a procedure for a person to  
3 obtain a license to carry a stun gun.

4       Sec. 411.222. PERSONS EXEMPT FROM LICENSING. A person is  
5 not required to obtain a license under this chapter if the person is  
6 a peace officer, including a commissioned peace officer of a  
7 recognized state and a special investigator under Article 2.122,  
8 Code of Criminal Procedure, who is authorized by law to carry a  
9 weapon.

10       Sec. 411.223. STANDARDS AND PROCEDURAL REQUIREMENTS. In  
11 establishing a procedure under Section 411.221, the department  
12 shall require an applicant for a license under this subchapter to  
13 meet standards and satisfy procedural requirements that are  
14 substantially similar to the standards and procedural requirements  
15 for obtaining a license to carry a concealed handgun described by  
16 the following sections of Subchapter H:

- 17               (1) eligibility (Section 411.172);  
18               (2) application (Section 411.174);  
19               (3) issuance or denial of license (Section 411.177);  
20               (4) form of license (Section 411.179(a));  
21               (5) notification of denial, revocation, or suspension  
22 of license; review (Section 411.180);  
23               (6) expiration (Section 411.183);  
24               (7) modification (Section 411.184);  
25               (8) renewal (Section 411.185);  
26               (9) revocation (Section 411.186); and  
27               (10) suspension of license (Section 411.187).

1       Sec. 411.224. STUN GUN PROFICIENCY AND TRAINING. (a) The  
2 director by rule shall establish minimum standards for stun gun  
3 proficiency and shall develop and make widely available throughout  
4 the state a course to teach stun gun proficiency and an examination  
5 to measure stun gun proficiency. The examination to measure stun  
6 gun proficiency must require an actual demonstration by the  
7 applicant of the applicant's ability to safely and proficiently use  
8 a stun gun.

9       (b) Except as provided by Subsection (c), the department  
10 shall charge a fee for the training offered under this section.

11       (c) The director by rule shall establish minimum standards  
12 for the certification of stun gun instructors. An applicant for  
13 certification as a stun gun instructor under this subsection must  
14 be a peace officer employed by the department and must successfully  
15 complete the training offered under this section before the  
16 department may certify the applicant as a stun gun instructor. An  
17 applicant for certification as a stun gun instructor is not  
18 required to pay a fee for the training under this section.

19       Sec. 411.225. OTHER RULES AND PROCEDURES. The department  
20 shall adopt any other rule or establish any other procedure  
21 necessary or appropriate to administer this subchapter.

22       Sec. 411.226. CONFIDENTIALITY OF RECORDS. The department  
23 shall disclose to a criminal justice agency information contained  
24 in its files and records regarding whether a named individual or any  
25 individual named in a specified list is licensed under this  
26 subchapter. The department shall, on written request and payment  
27 of a reasonable fee to cover costs of copying, disclose to any other

1 individual whether a named individual or any individual whose full  
2 name is listed on a specified written list is licensed under this  
3 subchapter. Information on an individual subject to disclosure  
4 under this section includes the individual's name, date of birth,  
5 gender, race, and zip code. Except as otherwise provided by this  
6 section, all other records maintained under this subchapter are  
7 confidential and are not subject to mandatory disclosure under the  
8 open records law, Chapter 552, except that the applicant or license  
9 holder may be furnished a copy of disclosable records on request and  
10 the payment of a reasonable fee. The department shall notify a  
11 license holder of any request that is made for information relating  
12 to the license holder under this section and provide the name of the  
13 person or agency making the request. This section does not prohibit  
14 the department from making public and distributing to the public at  
15 no cost lists of individuals who are certified as stun gun  
16 instructors by the department.

17 Sec. 411.227. DISPLAYING LICENSE; PENALTY. (a) If a  
18 license holder is carrying a stun gun on or about the license  
19 holder's person when a magistrate or a peace officer demands that  
20 the license holder display identification, the license holder shall  
21 display both the license holder's driver's license or  
22 identification certificate issued by the department and the license  
23 holder's license issued under this subchapter. A person who fails  
24 or refuses to display the license and identification as required by  
25 this subsection is subject to suspension of the person's license as  
26 provided by department rule adopted under this subchapter.

27 (b) A person commits an offense if the person fails or

1 refuses to display the license and identification as required by  
2 Subsection (a) after previously having had the person's license  
3 suspended for a violation of that subsection. An offense under this  
4 subsection is a Class B misdemeanor.

5 Sec. 411.228. AUTHORITY OF PEACE OFFICER TO DISARM. A peace  
6 officer who is acting in the lawful discharge of the officer's  
7 official duties may disarm a license holder at any time the officer  
8 reasonably believes it is necessary for the protection of the  
9 license holder, the officer, or another individual. The peace  
10 officer shall return the stun gun to the license holder before  
11 discharging the license holder from the scene if the officer  
12 determines that the license holder is not a threat to the officer,  
13 the license holder, or another individual and if the license holder  
14 has not violated any provision of this subchapter or committed any  
15 other violation that results in the arrest of the license holder.

16 SECTION 5. The public safety director of the Department of  
17 Public Safety shall adopt the rules required by Subchapter H-1,  
18 Chapter 411, Government Code, as added by this Act, not later than  
19 November 1, 2009.

20 SECTION 6. (a) Except as provided by Subsection (b) of this  
21 section, this Act takes effect September 1, 2009.

22 (b) Sections 1, 2, and 3 of this Act take effect March 1,  
23 2010.